PROTECTION TO SLAVE PROPERTY.

SPEECH

OF

HON. A. G. BROWN, OF MISSISSIPPI,

IN DEFENCE OF

HIS PROPOSITION FOR IMMEDIATE CONGRESSIONAL PROTECTION TO SLAVE PROPERTY IN THE TERRITORIES,

WITH

THE REPLY OF SENATOR FITCH.

DELIVERED IN THE SENATE OF THE UNITED STATES MARCH 6, 1860.

WASHINGTON:
1860.

SPEECH.

The Senate having resumed the consideration of the resolutions offered by the Senator from Mississippi, (Mr. BROWN,) relative to property in the Territories—

Mr. BROWN said:

Mr. PRESIDENT: I ask, before proceeding with my remarks, that the resolutions may be read.

The Secretary read them, as follows:

Resolved, That the Territories are the common property of all the States, and that it is the privilege of the citizens of all the States to go into the Territories with every kind or description of property recognized by the Constitution of the United States, and held under the laws of any of the States; and that it is the constitutional duty of the law-making power, wherever lodged, or by whomsoever exercised, whether by the Congress or the Territorial Legislature, to enact such laws as may be found necessary for the adequate and sufficient protection of such property.

Resolved, That the Committee on Territories be instructed to insert, in any bill they may report for the organization of new Territories, a clause declaring it to be the duty of the Territorial Legislature to enact adequate and sufficient laws for the protection of all kinds of property, as above described, within the limits of the Territory; and that, upon its failure or refusal to do so, it is the admitted duty of Congress to interpose and pass such laws.

Mr. BROWN. When I introduced these resolutions, Mr. President, I acted under a deep sense of duty. I had seen the southern people excluded from most—indeed, from all but one—of the organized Territories of this Union with their slave property; and I believed that the same thing would occur in reference to the Territories about to be organized, unless Congress interposed its authority to prevent it. I therefore, in reference to Territories about to be organized, moved resolutions which looked to direct, immediate, and positive protection to slave property. As to the Territories already organized, I soon after introduced a bill looking to the overthrow of their unfriendly acts, and to the substitution of laws friendly to this species of property. In all these I sought what I believed to belong to the southern people under the Constitution; nothing more. At one time I supposed these resolutions would meet the approbation of Democratic Senators generally. I have been undeceived on that point. Their refusal, however, to sustain them has in nowise shaken my confidence in their correctness; and I stand before you to-day, sir, to plead the cause of these resolutions. If I fail to convince the Senate that the resolutions are right in principle, I trust I shall at least have the consolation of feeling that my hearers believe me to be sincere in offering them.

The resolution, and the bill which I subsequently introduced, and to which I have already alluded, embody these substantive principles: first, that a slave is property under the Constitution of the United States; secondly, that, being property, his owner has the same right to take him to a common Territory, and there hold him as property, that the owner of any other species of property has to take that species and hold it there; thirdly, that having the constitutional right

to take his property to the Territory, he is of necessity entitled to have it protected after he gets it there, else the right would be nugatory. Up to this point, I have not found myself differing materially with my Democratic friends; but at this point, as was well said by my honorable friend from Indiana, [Mr. FITCH.] we begin to diverge. I insist that it is primarily the duty of a Territorial Legislature to afford me the protection to which I am entitled; but the Legislature failing or refusing, that it then becomes the duty of Congress to afford that protection; and here comes the rub. Is Congress, under any circumstances, bound to afford me adequate and sufficient protection for my slave property? I insist that it is; that if slaves are property under the Constitution, they are entitled to the same protection which is afforded to any other kind of property; and that, whatever obligations were imposed by the Constitution, are imposed directly upon Congress, and not upon a Territorial Legislature. Whatever appeal I, as a citizen of one of the sovereign States of this Union, address for the maintenance of my constitutional rights, I necessarily address to Congress; and why? Because all the powers imposed by the Federal Constitution to make laws were imposed upon Congress, and not, I repeat, upon a Territorial Legislature.

Sir, when the Constitution was formed, there was no such thing as a Territorial Legislature, and there was no such thing for many years afterwards. No authority is found in the debates which gave rise to the Constitution, indicating that the framers of that instrument supposed there ever would be such a legislative body as a Territorial Legislature; therefore, no obligations were imposed upon such Legislatures by the Constitution. The obligations were imposed, I say again, upon Congress; and Congress, acting within its legitimate sphere, may transfer these obligations, in a limited degree, to one of its own creatures; but Congress cannot, in the act of transferring an obligation to an inferior, discharge itself from the obligations imposed by the Constitution. If I am right, therefore, in assuming that slaves are property, and that the owners have the right to take them into the Territories, and have them protected, I must be right in concluding that the duty rests upon Congress to afford that protection. If it is done by the creature, well; if it is not so done, then it is the duty of the creator, upon whom the obligation was imposed by the Constitution, to interpose and see that it is done.

I am told, sir, that these resolutions, and the bill by which I followed them, cannot be passed. This is not because they do not embody, in the main, sound principles, or are not capable of being so amended as to bring them within reach of nearly all, if not, indeed, all the Democratic Senators. I know that in no sort of form can they retain their substance, and yet command Republican votes. But I am told that they cannot be so amended, so thrown into shape, as to command the votes of conservative Democrats. Sir, there was a day when I had great respect for the word conservative. I thought it meant a politician who would retain the substance of a proposition, and yet so accommodate the details as to meet his brethren; but a conservative seems to me now to be a sort of go-between, a divider of principles, demanding a little of one thing and a little of another, and not much

of anything; a sort of political toll-gatherer, who looks North and South, East and West, for customers; and cares very little from what direction they come, if they only pay their toll. I thank God that I am not such a conservative. I thank my Maker that He so created me that I am capable of feeling earnest convictions; and that He endowed me with sufficient moral courage to express them in the face of all opposition.

I have heard it suggested that a compromise may be effected by which, if the South will agree to surrender everything of the substance on another question, she will be allowed to retain something of the substance upon this proposition; in plain English, that, if we will agree to a discriminating tariff, if we will allow protective duties to be levied upon coal and iron and other northern productions, then certain northern men will yield enough of their opposition upon this question to give us that sort of protection which will be required for our slave property in the Territories. I have heard such things talked of. I find the proposition embodied in a very well-written letter from a former member of this body, a distinguished gentleman of New Jersey—I mean Commodore Stockton. I have heard it spoken of here and elsewhere. It therefore comes in a form sufficiently imposing to induce me to look at it, and address myself to it. I send an extract from the letter of Commodore Stockton to the Secretary's desk, and ask him to read it.

The Secretary read as follows:

"I am for peace—I am for the Union—and therefore I am for concession, if concession will insure peace. The North is infuriated with a passionate, almost irreligious fanaticism; the South, maddened by the certainty of the horrible results which that fanaticism threatens, is assuming an attitude of serious, stern resistance. To avert the inevitable progress of the conflict I would have the North concede at once, and promptly and cordially agree: 1. To recognize as final and conclusive the decisions of the Supreme Court. 2. Comply faithfully with the requisitions of the fugitive slave law. 3. To recognize the right of our southern fellow-citizens to take their slave property into the Territories, and to its protection there under the Constitution of the United States.

"While the South in return should concede 'specific duties,' or a more satisfactory 'tariff' than that at which the North at present so generally complain.

Mr. BROWN. It is thus seen, Mr. President, that we have the broad proposition submitted to us to surrender our opposition to protective tariff laws, to the end that we may obtain our constitutional rights. I say it in all respect to gentlemen; but never can I be brought to the point of buying my constitutional rights from any one. Sir, we are entitled to have our slave property protected, or we are not. If we have the right, it is your duty to respect it; to respect it without qualification. If we have no such rights, then we should make no such demand. Now, what we ask is, respect for a right guarantied by the Constitution. What is it that the tariff party ask? That you will so shape your legislation as to do them a favor. I have not understood that the most zealous and earnest advocate of a protective tariff ever claimed that Congress was bound to afford him protection, but only that Congress might afford it, if Congress thought fit. Therefore the cases are not equal.

We are asked to give up an absolute right. Is it quite modest to ask us to do this? Is it quite modest in Pennsylvania and New

Jersey, represented, as they are, upon this floor, and by an overwhelming Free-Soil majority in the other wing of the Capitol, making consistent and persistent war upon our slave property; Pennsylvania represented here by a moderately active friend to the South and to the whole country, [Mr. BIGLER,] and by a warm and zealous opponent of slavery on the other side of the Chamber, [Mr. CAMERON;] New Jersey represented in the same way, by my honorable friend, [Mr. THOMSON,] and by his colleague on the other side, [Mr. TEN EYCK;] and both of them in the other House by an almost united Free-Soil delegation; is it quite modest in those States, who thus make war upon slave property, to ask the owners of that species of property to allow it to be taxed for their benefit? What would Pennsylvania think, what would New Jersey think, if the South should ask their people to submit to taxation, that our people might realize larger profits upon their investments in land and slaves? Suppose I had invested $100,000 in a plantation and slaves, and found that it was not paying—that it did not yield me three per cent. upon the investment: how long, let me ask my friend from New Jersey, [Mr. THOMSON,] or from Pennsylvania, [Mr. BIGLER,] and their colleagues on the other side, would Pennsylvania and New Jersey listen in patience to my appeal that their people should be taxed, that I might realize larger profits? And yet, that is their appeal. You tell me that you have invested large sums of money in manufacturing establishments, mills, and machinery, and all that sort of thing, and that your profits are very small; and you ask me to tax the people whom I represent, through the agency of discriminating tariff laws, to enable you to realize larger profits. This you do, I repeat, while you are making war on the very people who buy your goods, and consume your iron and your coal. Is it modest? Can you really expect us to do it? Can you expect us to tax our slave labor for the benefit of your white labor?

Sir, the protection which we ask is, protection for the property itself; not that incidental protection which will enable us to realize larger profits. The property itself is in danger; war is levied upon it, and it is threatened with destruction. In this state of things, we come to the common Government, and ask it to interpose its authority to shield our property from destruction. Sir, if your cotton mills and your shoe factories; if your machinery, if your iron works and your coal mines, were menaced by an enemy about to destroy them, to destroy the actual property itself, and you came to me as a southern Senator, and asked for assistance, I would say, "Yes, we will send the armies of the Government to protect your property, and do whatever the case requires." If the property of our northern brethren was threatened with destruction from any quarter, and they appealed to me to pass additional laws for its preservation, I would not hesitate an instant. If it was threatened by the incendiary, if it was threatened by mob violence, if it was invaded from any quarter, and was about to be destroyed, I should hold it to be the duty of the Government to interpose, not only with its armies, but, through its legislative authority, clothing the courts, and arming the Executive with all necessary power for its protection. I mean to be explicit on this point.

Now what do we ask. Our property is thus menaced. It ha already been driven out of Washington, Oregon, California, Nebraska Kansas, and, to a great extent, from Utah, receiving protection no where but in the Territory of New Mexico. War is made upon it persistent war; war in the States and war in the Territories; an when I come to ask you for protection, what do you tell me? If will give you that sort of protection to your manufacturing establish ments, your coal mines, and your iron furnaces, that will enable yo to realize larger profits, then you will consider the proposition to pro tect my actual property, not my profits, but the property itself. reject the proposition with scorn.

But, sir, while it is admitted by many northern men that we hav not had justice in the Territories, that our rights have not beer respected as they should have been, they yet tell us that we are no pursuing the right remedy in the right way; that, instead of coming to Congress, we ought to go to the courts, and there, armed with th common law, and the Constitution as expounded by the Supreme Court, we shall find adequate and sufficient protection. I will pay my respects very briefly to this argument of the Constitution and the common law. Before I proceed to do so, I will send to the Secretary's desk, and ask to have read, a paragraph from the speech of my honorable friend from Indiana, [Mr. FITCH.]

The Secretary read, as follows:

"But it is said if Congress does not give this protection, it can nowhere be found. From this opinion I dissent. It can be found in the common law. It now exists in Kansas under the common law, without any congressional or other legislative enactment. If any species of property has peculiarities rendering other than a common law remedy necessary for its protection, it is the duty of the local Legislature to grant that remedy. If such protection was required in this District, it would be the duty of Congress to grant it. If it is required in a Territory, it is the duty of the Territorial Legislature to grant it—a duty I am unwilling to believe any Territorial Legislature will seek to evade. Certainly, there is now no organized Territory adapted to slavery, and where it exists, or is likely to exist, and where protection is consequently required, and is withheld. I know what my friend on my right [Mr. BROWN] has in his mind. He would cite to me the late action of the Nebraska Territorial Legislature as proof to the contrary. [Mr. BROWN assents.] I do not so deem it, for the reason that no protection was required there; scarce a single slave exists, or is likely to exist, in that Territory; and hence the action of its Legislature, in the enactment of a prohibitory slave law, was a mere mockery—a *brutum fulmen*—and vetoed as unconstitutional."

Mr. BROWN. My friend is very confident in the opinion that a remedy can be found in the common law. I intend to treat the Senator's argument with every possible respect, and he knows that I am incapable of treating him otherwise than with marked consideration. But, sir, when doctors get to talking about common law they are very apt to make mistakes. I have great confidence in my friend's opinion so far as medicine is concerned, for he is a doctor of medicine. He will excuse me if I say I have not very much confidence in his opinions as a lawyer, because he does not claim to be a doctor of law. If I wanted the treatment of a physician, I know of no one whom I would call in sooner than my friend. If amputation was necessary, I know of no surgeon whom I could trust to take off a limb with more perfect assurance than my friend. But, sir, if I wanted a case pleaded in court, involving acquaintance with the common law, he will excuse me if I say that I would rather have a man who had dived a little deeper into Coke and Blackstone.

This argument is so often used, and has sunk so deeply into the public mind, that I feel, in the attitude which I occupy to-day, called upon to meet it; not only as it is presented by the honorable Senator from Indiana, but as presented by others. I believe that the Constitution and the common law, unaided by statutory law, do not afford, and cannot in the nature of things afford, sufficient protection for slave property in the Territories; and by way of illustration, I beg to make cases. Suppose I go with my slave to Kansas, and he is decoyed from my possession; taken, not into Illinois or Indiana, or any other non-slaveholding State, where it may be said I could pursue him under the provisions of the fugitive slave law; but taken from the county in which I am domiciliated, simply into an adjoining county—not stolen, recollect, but simply decoyed from my possession; induced by signs, winks, and nods, which I never could establish in a court of justice, to leave my service; taken and harbored in an adjoining county. In this state of the case I undertake to pursue him as my property, and recover him, armed with the Constitution and the common law: now, sir, how shall I base my action? Will my friend tell me, as he seems to understand the common law, what is to be my suit? I have been told elsewhere, and probably I shall be told again, that if I could find the identical property taken, I could bring an action of replevin and recover the property. So I could. If I could find the exact property, I could bring my writ of replevin and recover it; but then, the same man who decoyed it from me yesterday might decoy it away to-morrow, and then I suppose I must bring another action of replevin; and so I must go on multiplying my actions to all eternity, recovering my property one day, simply to have it again decoyed from my possession the next.

But suppose I cannot find the property; that it is so secreted that I cannot get at it; that John Brown's man, finding me in hot pursuit of my slave, secretes him. I prove that he had him in his possession, but I cannot find him. What then? I suppose I am told that then I am to bring an action of trover, or an action of trespass, or some other action sounding in damages, and that a friendly court and jury would assess me the full amount of my damages. So they might; but what will my judgment be worth if the offending party happens to be, as he would be nineteen times out of twenty, an insolvent? I should have a return of *nulla bona*, and be compelled myself to foot the bill of costs. I should have lost my property; been engaged in a litigious lawsuit; recovered a worthless verdict, and had to pay the costs. This is your common law. No, Mr. President, the experience of every State in this Union, for more than one hundred years, has demonstrated the proposition that slave property is not secure without statutory laws. The Constitution has been in existence for seventy years; the common law has been in existence here ever since the colonies adopted it; and never, at any time since the adoption of the Federal Constitution, has the Constitution, aided only by the common-law remedies, afforded adequate and sufficient protection to slave property anywhere. The Senator goes on and says:

"If such protection was required in this District, it would be the duty of Congress to grant it. If it is required in a Territory, it is the duty of the Territorial Legislature to grant it; a duty which I am unwilling to believe any Territorial Legislature will seek to evade."

However unwilling my friend may be to believe that a Territorial Legislature would undertake to evade the responsibility, the conviction forces itself home upon him when he simply looks the facts in the face. What has Nebraska done? Within the last few weeks she has passed a bill, by large majorities, through both branches of her Legislature, not merely refusing to give protection to slave property in that Territory, but absolutely expelling it from the Territory. This bill was only saved from becoming a law by the active interposition of the Governor. The executive veto held in suspense a positive hostile act on the part of that Legislature. What have we seen in Kansas? Kansas has not only refused friendly legislation for the protection of this species of property, but she has, within the last few days, passed a law over the Governor's veto, by a vote, as I have seen it stated, of thirty to seven, absolutely expelling slave property from the Territory. I repeat, then, to my friend from Indiana, that however unwilling he may be to believe it, stubborn facts stare him in the face and must force the conviction home on him that the Territorial Legislatures have not discharged, and do not, and will not, discharge their duty.

"Certainly [says the Senator] there is now no organized Territory adapted to slavery where it exists, or is likely to exist, and where protection is consequently required, and is withheld."

I differ very widely from my friend from Indiana. There is just such a Territory; it is the Territory of Kansas. There we not only see protection withheld, but positive laws are passed prohibiting the existence of slavery. Does my friend from Indiana take the ground that Kansas is unsuited to slavery? I have heard this argument of climate and soil and production used so often against my appeal for the introduction of slavery into Kansas, that I stand prepared to answer it.

Sir, where is Kansas? It is in precisely the same latitude with the Capitol in which I speak to-day. The Capitol in which we are assembled for legislation to-day is not ten miles north or south of Wyandotte, the place where Kansas lately assembled in convention to form an anti-slavery constitution. Does slavery exist profitably here? Does it exist profitably all around us? Go into Maryland; go into Virginia; look into their planting interests, and come and tell me whether slavery does not exist profitably in those States, in the same latitude with Kansas, and with a greatly inferior soil; and whether it has not existed profitably for two hundred years; and yet we are told that it cannot exist in Kansas on account of climate and soil and productions. The climate is the same; the soil is virgin soil; the productions are the same. There are five States, one-third of all the slaveholding States, lying in the same latitude with Kansas—Delaware, Maryland, Virginia, Kentucky, and Missouri, containing a slave population of more than a million—States in which slavery has existed since the early settlement of this country, or from the earliest introduction of the black race on this continent; existed profitably at all times, and exists profitably now. Still we are told that slaves cannot be introduced into Kansas, because the soil and climate and productions forbid it. Sir, I believe no such thing. If the master

can work his slave profitably on the old lands in Maryland, worth $100 per acre, how much more profitably can he work him on the virgin soil of Kansas, in the same latitude, worth $1 25 per acre? Ah, sir, give him Maryland laws to protect his slaves in Kansas, and he will laugh to scorn your arguments about climate and soil and productions.

But what has been the course of this Territorial Legislature? Why should it commend itself, as it seems to do, not only to Republicans, but to Democrats? What are its appeals to your forbearance? It passed a law, which I have in the volume before me, during the first year of its existence as a Territory, affording positive protection to slave property. Three years afterwards, as is shown by this volume, the Legislature repealed that law. The first Territorial Legislature of Kansas believed that slave property needed protection; and they afforded it by positive statutory legislation. When the Abolition party got the ascendency, they repealed that legislation, and substituted nothing in its place; thus practically carrying out the doctrines which the Senator from Illinois [Mr. DOUGLAS] first predicted would be efficient for the exclusion of slavery from a Territory. He it was who first promulgated the idea that non-action and unfriendly action on the part of a Territorial Legislature would be effective for the exclusion of slavery. That doctrine has been denounced; and by none more vehemently than by the honorable Senator from Indiana, [Mr. FITCH,] and the honorable Senator from Pennsylvania, [Mr. BIGLER.] I tell you, Mr. President, and tell the country, that the doctrines promulgated by the Senator from Illinois are in full force in Kansas to-day; and that they have produced the precise result which he predicted. My Democratic friends denounced these doctrines as I do; but when they are asked to apply the corrective, they pause, hesitate, and finally abruptly refuse.

Having repealed all laws in the Territory for the protection of slave property, the attitude of the Legislature then became one of non-action. The case up to that point stands as though Kansas had done nothing. In repealing her own statutes protecting slave property, she acted in an unfriendly spirit; that was unfriendly action. Thus, by the non-action and unfriendly action, suggested, I say again, first by the Senator from Illinois, we have been excluded from Kansas. Seeing that state of things, I supposed that when I asked my Democratic friends who have been loud in the denunciation of that doctrine, as I have been, to interpose and restore these repealed laws for our protection, they would do it. Instead of doing that, however, they tell me to wait until by and by, when very many other things have been shown, and they say that then they will be ready to interpose. Ah! my friends, you will interpose when all is lost. But more on that point presently.

My friend from Indiana tells me that whatever rights I have under the Constitution and the common law, he is for protecting—he is for seeing them protected in the courts of justice; in other words, if I can go to the courts and obtain a judgment, based upon the common law and the Constitution, then he is for seeing the judgment executed. This is about the extent to which my honorable friend goes. I might

almost ask the Senator from New York [Mr. SEWARD] whether he would not go as far as that; whether even he would interpose actively to take away from me a right guarantied by the Constitution, and by the common law, as expounded by the Supreme Court? If I can establish a constitutional right, through the courts, unaided by his active interference, I doubt very much, if the Senator were President, whether he would not see the judgment in my favor executed. It will not amaze the world much, then, if I say that my gratitude is not deeply excited by promises of this kind from a Democratic friend.

But, Mr. President, not only does this Government refuse that sort of protection to slave property in the Territories, to which I think it entitled, but it has denied us protection everywhere. It totally ignores the very species of property which constitutes the great moneyed interest of the country. There is directly and indirectly dependent upon the security of that property, investments of more than forty hundred millions of dollars. Destroy our $2,000,000,000 worth of slaves and you destroy the value of the soil on which they work; you destroy the value of all our machinery; our stock becomes worthless; commerce is broken up; our cities dwindle and perish; and yet, sir, this great interest—the greatest individual interest under the Government—gets no protection from the Federal head. How differently does it act towards others! Wherever your property goes, on the land or upon the sea, Government stretches over it the strong arm of its power and protects it.

Sir, it was but yesterday that I saw the stereotyped boast that the last night, or the night before, seventeen slaves had been spirited to Canada by the underground railroad. The colonial statistics show that thousands and thousands of slaves have been carried from the slaveholding States of this Union and secreted in Canada, and it is in vain that we complain to this Government. Suppose that the agents of the underground railroad were to boast every morning that last night they carried away seventeen head of horses from New York, one hundred head of horned cattle from Illinois, and five hundred sheep from Michigan; suppose the underground railroad managers were constantly boasting that Canada was being made a receptacle for your stolen goods: what would the Senator from New York say? What would New York herself say? What would all the non-slaveholding States say? They would go to the President and demand that he discharge his duty, by notifying the British Government that, unless the stolen property was given up, non-intercourse would be declared, and if its colony persisted in receiving and concealing the stolen goods of American citizens, this Government would resent the outrage, even by the shedding of blood.

I appeal to the Senator from New York, [Mr. SEWARD,] whether he does not know that such would be the course of his section if northern property was taken instead of ours; yet he sees our property carried off, a million dollars' worth of it every year, and if we appeal to him, he turns upon us with a derisive laugh, and walks away. Are we not your equals in the Confederation? Have we not the same right to claim the protection of the Government for our property that you have for yours? I know not, sir, what other men would do, but if I had

the power, the sun should not go down until I had filed a notice with the British Minister accredited to this Government that, unless Canada yielded up the stolen negroes, as she would be compelled to yield up stolen horses, cattle, or anything else, this Government would declare non-intercourse, and if that remedy was not efficient, this Government would declare war. She has no more right to conceal my stolen negroes than she has to conceal your stolen goods; and I have the same reason to complain of her that you would have. My complaint goes unheeded; yours would be listened to.

But, say gentlemen on our side, in your appeals for protection through the direct agency of Congress, you are departing from the recognized doctrine of the party—the doctrine of non-intervention. Sir, this argument so often resorted to, has produced a deeper and more lasting impression on the public mind than all else that has been said on that subject. It has made its impression in the South, in the West, in the East, and in the North; and I will endeavor to answer it. I have the point very fairly stated in a private letter from a leading citizen of Indiana, once a prominent member of the House, and now in retirement. He says:

"I repeat, we will stand by and see you take possession and firmly plant slavery in all Territories adapted to slave labor, which will be evinced by the action of local Legislatures, and will wish you success."

I have already replied to that point. He continues:

"But when you ask us to give you congressional codes for the protection of slavery in Territories, where the right is worth nothing to you, we respond, *no*."

To that, also, I have replied.

"We do this for two reasons: first, it is not in our power to send to Congress men to aid you."

We never asked impossibilities. We only say TRY.

"Second, we hold the doctrine as wholly unreasonable, and, excuse me for saying it, in the days of the proviso, many southern statesmen were understood by us as sanctioning *the doctrine of non-intervention* to the fullest extent. We understood the entire South to assent to this doctrine in the Kansas and Nebraska bill and in the Cincinnati platform. The claims of the present day wear to us the semblance of after thoughts," &c.

I mean to treat the question with entire fairness. It is true that we did agree to the doctrine of non-intervention; but it was to the doctrine of non-intervention as applied to the points then in dispute. Those points were the Wilmot proviso, and the doctrine that a Territorial Legislature might properly exclude slavery; we denying the power of Congress or the power of a Territorial Legislature to accomplish this result; our opponents on the Republican side, and some on the Democratic side, asserting that Congress had the power; but the large majority of the northern Democrats taking the ground that a Territorial Legislature could accomplish this end, and most of the southern men denying it. We were asked: "Why not allow Congress to act and to affirm the power; and then, if you are right in believing the act is unconstitutional, take your appeal to the Supreme Court and have the act overthrown?" Our reply was: "We do not want to go before the court with the force of a congressional opinion against us; we neither ask you to affirm our doctrine, nor allow that

you shall affirm your own; we are willing to go before the court unoppressed by the expression of any opinion, one way or the other, by Congress. To this extent we are for non-intervention; do not interpose your authority against us, and we are content that you shall not interpose it in our favor."

Well, sir, what have we done? We have been before the court, and the court has affirmed our side of the question. The court has determined that Congress has no power to exclude slavery from the Territories. It has affirmed more; that Congress can confer no such power on a Territorial Legislature; and that a Territorial Legislature, having no other powers than those which it derives from Congress, and Congress having no power to confer this authority, it cannot be exercised by a Territorial Legislature. And thus, our side of the two propositions has been affirmed; non-intervention has been worked out to its legitimate and proper conclusion; the doctrine is at an end; the case has been fully met; and has been entirely settled. At this point, the Senator from Illinois comes in with an altogether new doctrine, a doctrine never heard of before, to which our agreement never could have applied, because it was not then in existence—the doctrine that a Territorial Legislature, by unfriendly action, and by doing nothing, may as effectually exclude us as Congress could by direct legislation. Still, it is affirmed that all of us—I have seen the statement made very often in the newspapers, and heard it affirmed by members of Congress and by Senators, I have seen elaborate essays put forth to prove it, and read letters like the one just produced—it is still affirmed, I say, that we all agreed that Congress never should interpose in defense of slave property in a Territory; that we all agreed to leave the whole question to the people of the Territory; that we all agreed that if the people thought proper to have slaves, they might have them; and if they thought proper not to have them, then we were not to take them there. I never agreed to any such thing. By way of proving this declaration, I beg leave to call the attention of Senators, very briefly, to some of my former declarations on this point. In a speech pronounced by me in the House of Representatives, on the 3d day of June, 1848, I used this language. After discussing the whole territorial question, I said:

"The conclusions, Mr. Chairman, to which my own mind has arrived on the several points involved, are briefly these: That every citizen of the United States may go to the Territories and take with him his property, be it slaves or any other description of property. That neither the United States Congress, nor a Territorial Legislature, has any power or authority to exclude him; and that the power of legislation, by whomsoever exercised in the Territories, whether by Congress or the Territorial Legislature, must be exerted for the equal benefit of all, for the southern slaveholder no less than for the northern dealer in dry goods."

That doctrine I affirmed on the 3d day of June, 1848. I reaffirm it in the resolutions upon your table to-day, sir, to which I am addressing myself. Now, I will run hastily over other remarks of mine, to show you that I have never, at any time, departed in the slightest possible degree from this doctrine. On the 12th of February, 1850, in reviewing a speech pronounced by a then eminent Senator from

Michigan, now the Secretary of State, upon his favorite doctrine of squatter sovereignty, I am reported to have used this language:

"General Cass had (if Mr. B. correctly understood him) avowed his opinion to be, that the people of the Territories have the right to exclude slavery; and he was understood to sustain the action of the people of California in forming a State government. Against all these parts of the speech of General Cass, he (Mr. B.) entered his solemn protest." * * * * "But he understood General Cass as going further than this—to the extent of giving to the people of the Territories the right to exclude slavery during their territorial existence, and, indeed, before government of any sort had been established by Congress. He understood the doctrine as advanced by General Cass to be, that the occupants of the soil where no government existed—as in New Mexico, California, Deseret, &c.—had the right to exclude slavery; and against this doctrine he raised his humble voice; and though he might stand alone, without one other southern representative to sustain him, he would protest against it to the last."

Again, on the 13th day of May, 1850, I used this language:

"I admit the right of self-government; I admit that every people may regulate their domestic affairs in their own way; I freely and fully admit the doctrine that a people finding themselves in a country without laws, may make laws for themselves, and to suit themselves. But in doing this they must take care not to infringe the rights of the owners and proprietors of the soil. If, for example, one hundred or one thousand American citizens should find themselves thrown on an island belonging to Great Britain, uninhabited and without laws, such citizens, from the very necessity of their position, would have a right to make laws for themselves. But in doing this, they would have no right to say to her Majesty's subjects in Scotland, *you may* come to this island with your property; and to her Irish subjects, *you shall not* come with your property. They would have no right to set the proprietors at defiance, or to make insulting discriminations between proprietors holding one species of property and those owning another species of property. No such power would be at all necessary to their self-government; and any attempt to exercise it would justly be regarded as an impertinent attempt to assume the supreme power, when in fact they were mere tenants at will."

Again, on the 8th of August, of the same year, I used this language:

"Give us the Constitution, as it was administered from the day of its formation to 1819, and we are satisfied; up to that time Congress never assumed to interfere with the relation of master and servant. It extended over all, and gave to all equal protection; give it to us to-day in the same spirit, and we are satisfied. Less than this we will not accept. You ask us to love the Constitution, to revere the Union, and to honor the glorious banner of the stars and stripes. Excuse me, gentlemen; but I must say to you, in all candor, that the day has gone by when I and my people can cherish a superstitious reverence for mere names. Give us a Constitution strong enough to shield us all in the same degree, and we will love it. Give us a Union capacious enough to receive us all as equals, and we will revere it. Give us a banner that is broad enough to cover us as a nation of brothers, and we will honor it. But if you offer us a broken Constitution—one that can only shield northern people and northern property—we will *spurn it*. If you offer us a Union so contracted that only half of the States can stand up as equals, we will reject it. And if you offer us a banner that covers your people and your property, and leaves ours to the perils of piracy and plunder, we will trample it under our feet. We came into this Union as equals, and we will remain in it as equals. We demand equal laws and equal justice. We demand the protection of the Constitution for ourselves, our lives, and our property. Wherever we may be, we demand that the national flag, wherever it may wave, on the land or on the seas, shall give shelter and security to our property and ourselves."

The Senator from Illinois [Mr. DOUGLAS] the other day asserted, in the boldest and most emphatic manner, that in the passage of the Kansas-Nebraska bill there was a united agreement on the Democratic side to abide, through all time to come, by his favorite theory of non-intervention. I desire to read remarks made by myself on the very night when that bill was passed. On that memorable 25th of May, 1854, after ten o'clock at night, I used this language:

"It now lacks only ten minutes of 11 o'clock. Of course I do not intend, at this late hour, to detain the Senate with any further remarks on this bill, nor do I design to offer

any amendments; but I do not mean that the bill shall pass without my saying to the Senate and to the country that there are two amendments which I intended to have proposed, if the Senate had not already indicated, in distinct terms, that it is resolved to pass the bill in its present form. I am not going to run counter to the sentiment of the Senate; but when I have a clear and distinct opinion upon any subject, I am willing to express that opinion before the Senate and before the world; and having a clear conviction upon my mind that there are at least two defects in this bill, I wish, before the vote is taken, to point them out. I am willing that it may stand on record, for me or against me, through all time, that I thought these were defects. The first is in the fourteenth section of the bill. After speaking of the Missouri compromise, it says:

"'Which, being inconsistent with the principles of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the compromise measures, is hereby declared inoperative and void.'

"I intended to move to strike out the words which relate to the compromise measures of 1850, from the word 'with,' in line twenty-three, to the word 'is,' in line twenty-six, and insert 'the Constitution of the United States;' so as to make it read 'which, being inconsistent with the Constitution of the United States, is hereby declared inoperative and void.' I would much rather stand by the Constitution than by the compromise. I have much more respect for the Constitution than for the compromise. I need not say that I never have been for that compromise, am not for it now, and never expect to be for it. I have been for the Constitution, am for it now, and ever expect to be for it. I acquiesce in the compromise of 1850, just as we all did in the compromise of 1820, without approving it."

With what propriety, then, can it be said that I agreed to the doctrine of non-intervention as laid down in the compromise of 1850, in the Kansas-Nebraska bill, or anywhere else? Sir, I am at a loss to determine. These two points I never have waived. I never considered at any time, in any place, or under any circumstances, that the people of a Territory had a right to exclude slavery. I never yielded the point which I insist on to-day, that Congress is bound to interpose everywhere, upon the sea and upon the land, for the protection of my property and the property of my section, of my State, of my people, to the same extent that it interposes for the protection of other people's property.

The Senator from New York, [Mr. SEWARD,] in his very elaborate speech the other day, as other Senators had done before, undertook to show that slavery was not only detrimental to the best interests of the master, but a great wrong to the slave—to the black man. I take issue with those propositions; and without undertaking to elaborate the points necessarily involved, I declare again, as I did in reply to the Senator from Wisconsin, [Mr. DOOLITTLE,] that, in my opinion, slavery is a great moral, social, and political blessing—a blessing to the slave, and a blessing to the master. The evidence on which I affirm that it is no hardship to the black man, is found in this: that four millions of the negro race in the slaveholding States of this Union are to-day in a better condition, morally, socially, and religiously, than four millions of the same race anywhere on the face of God's habitable globe. I submit that proposition to the honorable Senator; and if there be four millions negroes on the four continents so happy, so contented, so well provided for, so moral, so religious, and occupying so high a social position as the four millions of southern slaves, tell me where they are to be found. If they are to be found neither in their native land nor in foreign climes, then how do you assume that they have been debased in their servile condition? How do you prove that slavery has degraded them, if they are better off than their race anywhere else?

But, sir, I have made up some very brief statistics, to show that

the black man in a state of slavery is more prosperous, and physically more vigorous, and multiplies his species in a greater ratio than he does in any other condition. I find in looking into national statistics that from 1810 to 1820—I take 1810 because that was immediately after the slave trade was abolished—the slaves of the United States increased twenty-nine per cent.; the free blacks twenty-seven per cent. (I omit fractions.) From 1820 to 1830 the slave increase was thirty per cent., and the free black thirty-four per cent. It will be recollected that that was a season when the spirit of emancipation was abroad; when Maryland was upon the very eve of emancipating her slaves; when Delaware virtually abolished slavery, retaining it only in name; when the southern slaveholding States generally were inclined to emancipate their slaves; but even under this state of things, the free black population only gained four per cent. over the slave population. From 1830 to 1840 the slaves increased twenty-three per cent., and the free blacks twenty per cent. From 1840 to 1850 what do we find? While abolition has been rampant all over the North; while the underground railroad has been doing a most active and energetic business; but while the Southern people, no longer yielding to a former feeling in favor of emancipation have been holding their negroes in bondage, absolutely refusing to do what they had done for ten or twenty years before, emancipate them in large numbers; this being the state of the case, what do we find from 1840 to 1850? That the slaves increased twenty-eight per cent., and the free blacks but twelve per cent.

I have also made up some statistics as to the relative increase of free blacks in the slave States and in the free States. From 1810 to 1820, their increase in the slave States was twenty-four per cent., and in the free States, thirty-one per cent.; from 1820 to 1830, in the slave States, it was thirty-four, and in the free States, thirty-three per cent.; from 1830 to 1840, in the slave States, it was eighteen, and in the free States, twenty-four per cent.; from 1840 to 1850, it was, in the slave States, ten per cent., and in the free States, fourteen per cent. It must be constantly borne in mind that thefts, escapes, and voluntary emancipation gave the North great advantages, while the South increased only from natural causes.

I deduce, Mr. President, from these figures, this conclusion: that the negro, not only in the non-slaveholding States, but in the slaveholding States, multiplies his species more rapidly in a state of slavery than he does in a state of freedom; that the ratio of increase is greater in a state of slavery than in a state of freedom. To that extent, then, I am justified in deducing that other conclusion at which I arrived long since, and enunciated the other day: that, as a physical being, and in every possible aspect in which he can be regarded, he is more prosperous in a state of slavery than in any other condition.

The Senator from Illinois, on the other side of the Chamber, [Mr. TRUMBULL,] told us the other day that slavery was a great wrong to the negro, inasmuch as it violated his inalienable rights as a man; that the negro, like the white man, in the language of the Declaration of Independence, was created equal, born free, and entitled to

certain inalienable rights; and among these were life, liberty, and the pursuit of happiness. The Senator afterwards qualified his statement by admitting that cases had arisen and would doubtless arise again, when these inalienable rights might be taken from the individual by society for the good of society. He admitted that the convict upon the gallows was deprived of his inalienable right to life; that the convict in the cells of a penitentiary was deprived of his inalienable right to liberty; and that the man upon the gibbet and he in the prison were both cut short in the pursuit of happiness. Thus he admitted that this boasted inalienable right might be taken even from white men, as it had been and would be again, if the good of society required it. I thank the Senator for the admission. With this admission, I shall not be required to establish that you can take other inalienable rights from the white man or the black man if the good of society requires it.

If, then, I have made good my position that slavery is no wrong, but a positive blessing to the black man, I have but to ask you to allow that southern society can judge for itself whether it is injured by slavery more than it would be by freedom to the black man. If our safety, if our good, if our security, if our prosperity is promoted by reducing the black man to a state of slavery, and we do him no wrong thereby, then I turn to the Senator from Illinois and ask him whether, in depriving the negro to another extent than the one admitted by himself of his inalienable right to liberty, I have done any wrong or violated any principle of the Declaration of Independence? The good of society requires you to hang a white man, and you hang him. The good of society requires us to enslave the black man, and we enslave him.

Speaking of the Declaration of Independence, I beg to say to that Senator, and others who constantly allude to it, that it is of authority only as an argument. The Declaration of Independence is the memorandum upon which is founded the contract entered into by the States. It is not the contract itself, nor is it any part of it. The Declaration of Independence was addressed to the king and the Parliament and the people of Great Britain. It simply formed a basis of action, when the convention was assembled to make the Federal Constitution. The Constitution is the contract, the Constitution is the compact, the Constitution is the bargain into which we entered; and it is useless to read to me the mere memoranda on which the contract was based for the purpose of overthrowing the contract itself. Every lawyer knows that, whatever may have been the basis of a contract, it is not binding on the parties after the contract itself has been written out, signed, sealed, and delivered. It is the Constitution which is binding. I make these remarks simply to show that Senators waste a great deal of time unnecessarily in reading the Declaration of Independence, even if their construction of its language is right, which I by no means admit; but, even admitting that their construction is right, I want my rights secured, guarantied, and protected, as it is provided in the Constitution, and not as you say it was suggested in the Declaration of Independence.

Mr. President, the Senator from Delaware [Mr. SAULSBURY] took

occasion the other day to denounce these resolutions of mine as mere abstractions. I beg to remind the Senator that the resolutions call for direct, immediate, and positive legislation—legislation needed by us, and guarantied, as I believe, to us by the Constitution. Shall I be charged with bringing in a list of abstractions when I introduced a proposition, as I believe, at the right time and in the right place, calling for such legislation as the people whom I represent absolutely require for the security of their property? Is that an abstraction which looks to positive action on the part of this body? which calls on the Legislature and the Executive to give us such laws as will afford us protection to our lives, our liberties, and our property? Is it any more an abstraction that I should call for protection for my slaves, than that gentlemen from New England should call for protection for their shipping and their merchandise? Is it any more an abstraction that I should call for the protection of my slave property than that the Senator should move a resolution looking to an improvement of the breakwater in the Delaware Bay? These are not abstractions. I beg to remind the Senator that these are resolutions which look to positive legislation. I purposely avoided subjecting myself to the imputation of having brought mere abstractions before the Senate.

Mr. SAULSBURY. Will the Senator from Mississippi allow me a moment, as he has referred to a remark that I made in reference to his resolutions?

Mr. BROWN. Certainly.

Mr. SAULSBURY. What, Mr. President, were the contents of the resolutions offered by the Senator from Mississippi? Did the resolutions themselves propose any immediate legislation? Not at all. They were simply declaratory of certain principles, upon which there was a division of opinion among the people of the country. They declared, first, that the law-making power, wherever lodged, was bound to protect slave property; and that, if a Territorial Legislature neglected to perform this duty, which was incumbent on them, then it would become the duty of the Federal Congress to provide that protection. Did he show a single instance where any person professed to be aggrieved by non-legislation, either by a Territory or by Congress? Did he present a petition from any slaveholder, in any part of the whole country, asking for this protection? Did he cite a single instance where wrong or injury had been done by withholding this protection? Not one, at that time. His resolutions, in themselves, did not contemplate legislative action, and he proposed no immediate legislative action. I think, therefore, I was right in declaring, as I did, that the resolutions of the Senator, as well as the resolutions of a kindred character which were then before the Senate, were simply resolutions in reference to abstract questions of legal right.

Mr. BROWN. Mr. President, I am very sorry that my resolutions have been before the Senate for nearly two months, under debate every week during that time, and that the Senator has not found what is in them. The second resolution instructs the Committee on Territories to incorporate into any bill that they may report for the organization of new Territories positive protection to slave property. The Senator says I did not propose any direct and immediate action.

Mr. SAULSBURY. But the Senator did not show that there was a single slave in any Territory that was about to be organized, so as to prove the necessity for such legislation.

Mr. BROWN. I have not learned that my duty as a legislator requires me to be absolutely idle until somebody petitions me to be active. I knew my duty, sir, and I undertook to discharge it. My duty was, as I conceived, to see that that adequate protection which was extended to every other species of property, should be afforded to slave property in the Territory of Kansas. I do not need to have petitions sent to me to put my thoughts in motion, and stir me up to the performance of my constitutional duty. Sir, do we never legislate here except on petitions? If the Senator knew that the interest of Delaware was being destroyed, if he knew it as a citizen and as a Senator, would he act? or would he wait until somebody petitioned him to act? Would he consider himself as bringing in an abstraction if he proposed legislation which he knew, as a citizen and as a Senator, his State required?

Mr. SAULSBURY. Now, I beg leave to answer that question, and to show that there is nothing parallel between the case which the resolution of the Senator contemplates, and the case that he puts to me in reference to the interest of Delaware. Does the Senator know of a single unorganized Territory in the United States which is now being sought to be organized into a Territory where there are any slaves to be protected? Does he know of one where a single slaveholder exists whose rights are about to be injured by any action of the people of such a Territory?

Mr. BROWN. Yes, sir; I know that the rights of slaveholders are not only about to be violated, but that they have been violated in the Territory of Kansas.

Mr. SAULSBURY. There the Senator applies it to organized territory. His resolutions are in reference to unorganized territory.

Mr. BROWN. If the neglect, the cold neglect, of Congress to afford protection to this property in the organized Territories, has resulted in the exclusion of slavery from them all, saving only New Mexico, had I not a right to conclude that, if other Territories were organized without that protection, they too would be deprived of this right? If the non-action, if the neglect of Congress, added to the non-action and unfriendly action of Kansas, Nebraska, Washington, California, and Utah, has resulted in the exclusion of slavery from those Territories and young States, had I not a right to conclude that Pike's Peak, Arizona, Jefferson, and Dacotah, and all the other Territories about to be organized, would also be deprived of slaves through the same agencies? Then was I not right in the first instance to insist that when you propose to organize Territories, you must incorporate the principle of protection into their charters? Then, sir, as to the Territories already organized, I proposed a bill which I suppose my friend from Missouri, whom I do not see in his seat, the chairman of the Committee on Territories, [Mr. GREEN,] will take very good care to lull to sleep, at least until after the Charleston convention. That bill was intended to overthrow the unfriendly and unconstitu-

tional legislation of Kansas, and to afford the slaveholding States their equal privileges in that Territory.

Now, sir, if the Senator from Delaware, and others, want to know what has been the action of Territorial Legislatures in reference to the protection of property of all kinds, let them consult this and other similar volumes. It is the laws of Kansas. I have not the time to read these laws; but, to show you that that Territorial Legislature felt itself called upon to protect everything else but slavery, I will read the titles of some of their statutes. Here is an act concerning apprentices; an act concerning attorneys at law; an act concerning bills of exchange and negotiable promissory notes; an act concerning bonds and notes; an act for the speedy recovery of debts due on bonds and notes; an act to regulate contracts and promises; an act to provide for the punishment of offenses against the public health; an act concerning divorce and alimony; an act to prevent the sale of intoxicating liquors and games within certain districts; an act concerning landlords and tenants; an act for the regulation and management of the territorial library; an act respecting lost money and goods; an act concerning estrays; an act to prevent trespasses; and so on. This shows that that Territorial Legislature was not disposed to leave everybody else as it left us—to the tender mercies of the Constitution and the common law. It interposed, by positive legislation, to protect every species of property except slave property.

Mr. SAULSBURY. Will the Senator pardon me one moment? I do not wish to be misunderstood. I do not wish to place myself in the position of denying the propriety of equal protection to slave property with any other species of property in a Territory. When the Senator shows an actual case where the slaveholder has been wronged in any Territory of the United States by the action of a Territorial Legislature, and where he has no adequate remedy to redress that wrong, I, for one, shall be as ready to vote for the protection of slave property in a Territory as I would for the protection of any other species of property. I have no sympathy with those who deny that slaves are property, and just as completely and just as fully as any other species of property known to any law of any State of this Union; and I have no disposition to deny to that species of property any protection which any other species of property has afforded to it; but the difference between the Senator and myself is simply this: he supposes that there is a present and actual necessity for such legislation; I have not seen that present necessity.

Mr. BROWN. I have already shown that Kansas passed laws in the beginning to protect this kind of property. I have shown you that she repealed those laws and substituted nothing in their stead. I now go further, and show you that in derogation of the authority of Congress, and in violation of its laws, the people of that Territory have assembled through their delegates in convention, and made an anti-slavery constitution, thus setting the authority of Congress at defiance. I next show you that they have passed a law positively abolishing slavery in the Territory, thus setting the authority of the Supreme Court at defiance. I then go one step further, and show you that they have passed, within the last few days, a personal liberty

bill, more odious in its terms than even a similar bill passed by the Legislature of the State of Massachusetts. I send the bill to the Secretary's desk, and ask him to read it.

The Secretary read, as follows:

AN ACT to secure freedom to all persons within the Territory of Kansas.

Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas: No person within this Territory shall be considered as property, or subject, as such, to sale, purchase, or delivery; nor shall any person, within the limits of this Territory, at any time, be deprived of liberty or property without due process of law.

SEC. 2. Due process of law, mentioned in the preceding section of this act, shall, in all cases, be defined to mean the usual process and forms in force by the laws of the Territory, and issued by the courts thereof; and under such process such persons shall be entitled to a trial by jury.

SEC. 3. Whenever any person in this Territory shall be deprived of liberty, arrested, or detained on the ground that such person owes service or labor to another person, who may reside either within or without this Territory, either party may claim a trial by jury; and in such case, all the legal benefits of challenges provided for by law, in any case, shall be allowed the defendant.

SEC. 4. Every person who shall deprive, or attempt to deprive, any other person of his or her liberty, contrary to the provisions of the preceding sections of this act, shall, on conviction thereof, forfeit and pay a fine not exceeding $2,000, nor less than $500, or be imprisoned in some jail in the Territory for a term not exceeding——

SEC. 5. Every person who shall hold, or attempt to hold, in this Territory, in slavery, or as a slave, any free person in any form, or for any time, however short, under a pretence that such person is or has been a slave, shall, on conviction thereof, be imprisoned in the penitentiary, or some county jail, for a term not less than one year, nor more than fifteen years, and be fined not exceeding $2,000.

SEC. 6. All acts, and parts of acts, inconsistent with the provisions of this act, are hereby repealed.

SEC. 7. This act shall take effect from its passage.

Mr. BROWN. Thus we see, Mr. President, that the Territorial Legislature of Kansas deprives us of our rights by non-action and unfriendly action; goes on and adopts a constitution in violation of the authority of Congress; passes a law in derogation of a decision of the Supreme Court positively prohibiting slavery; and then winds up the whole affair with that personal liberty bill; and still we are asked to fold our arms and rely on the Constitution and the common law to give us protection. Sir, the gentlemen who have so much faith in courts, unaided by statutory laws, go far ahead of the teachings of my experience. Why, sir, I should as soon think of proceeding against John Brown, to get back again into the armory at Harper's Ferry by an action of ejectment, relying on the court to give me a judgment of ouster, and then sending the sheriff with his *posse* to turn him out, as to rely on the courts, aided only by the Constitution and the common law, to give me protection for my rights, in the face of such legislation as this.

What I demand is protection—that protection which you admit we are entitled to under the common Constitution. Give it to us now; do it at once. You see what delays have produced. You see of what right, of what liberty, of what privileges, we have been deprived by your non-action heretofore. Still you ask us to wait. We have lost Territory after Territory beyond redemption, and all for what? Not because the soil and climate and production were against us, but because we had no law to protect us. We waited under these specious pleas that our rights would not be snatched from us, until they are

gone without hope of recovery. We come again and ask protection, and you tell us still to wait.

Sir, I find published in the gazettes of the day a series of resolutions, said, I have no reason to doubt, correctly, to have been agreed upon in a caucus of Democratic Senators. To the first, second, and third, and to the sixth and seventh of those resolutions, I make no objection, and therefore shall offer no comment. The fourth and fifth do not so precisely meet my approbation. The fourth resolve is in these words:

"4. *Resolved*, That neither Congress nor a Territorial Legislature, whether by direct legislation or legislation of an indirect and unfriendly character, possess power to annul or to impair the constitutional right of any citizen of the United States to take his slave property into the common Territories and there hold and enjoy the same while the territorial condition remains"

I have only a verbal criticism to make on that resolution. I like the word "right" better than the word "power." I can see very well that a Territorial Legislature may have the power to accomplish the result without doing it rightfully. I have seen that result accomplished already; accomplished wrongfully; still it was the exercise of power. I have no expectation, no belief, that the word was introduced with any other than the same purpose that I would have, if I substituted a different word; and therefore I criticise the introduction of it here in no unfriendly spirit. I suppose it was intended to be used as synonymous with the word "right." With that alteration in the resolution I should be satisfied. The fifth resolution is in these words:

"5. *Resolved*, That if experience should at any time prove that the judicial and executive authority do not possess means to insure adequate protection to constitutional rights in a Territory, and if the territorial government should fail or refuse to provide the necessary remedies for that purpose, it will be the duty of Congress to supply such deficiency."

Sir, I think the duty of Congress commences at an earlier period than is designated in this resolution. I am not willing to wait for experience to demonstrate that which experience has already demonstrated. So far as my individual action is concerned, I base it upon my own conviction that experience has proved in the last seventy years all that experience will prove for seventy years to come. Sir, if experience has not already shown us that protection, by direct and immediate legislation, is necessary for the security of slave property in the Territories, in my opinion it never will demonstrate that fact. I have said before, and now repeat, in this connection, that experience in every one of the slaveholding States has shown that legislation is necessary in aiding the Executive and judiciary to give protection to this kind of property. Such legislation has been found necessary in Mississippi, necessary in Louisiana, necessary in all the slaveholding States without a solitary exception, so far as I am informed or believe. If experience has shown that legislation is necessary in all the slave States, why are we called upon to wait until experience shall demonstrate that a like necessity exists in a Territory? I see no reason for it. I think experience has shown us that, unaided by statutory law, slavery has not been protected in Kansas; it has not been protected in any of the Territories; but it has been driven out by the force of public opinion in derogation of the rights of the master, and,

as I honestly believe, in total disregard of the guarantees of the Constitution.

"And if the territorial government should fail or refuse to provide the necessary remedies."

Why, sirs, have they not already failed and refused? Have I not read document after document from Kansas, showing that they have failed and refused? Why wait? If you are going to legislate actively, when it shall be shown that they have failed and refused, then you must do it now. They have failed; they have refused; they have passed positive laws hostile to slavery—personal liberty bills; bills abolishing slavery; bills repealing former laws protecting slavery. If all this does not prove that Kansas has failed and refused, I do not know what evidence we shall require to be convinced on that point.

Only, Mr. President, with a view to indicate my own clear convictions on this subject, and with no expectation that the proposition is to be received with greater favor in the Senate than it was received elsewhere, I give notice that when this resolution is brought to a vote of the Senate, I shall move this amendment:

That experience having already shown that the Constitution and the common law, unaided by statutory enactment, do not afford adequate and sufficient protection to slave property, some of the Territories having failed, others having refused, to pass such enactments, it has become the duty of Congress to interpose and pass such laws as will afford to slave property in the Territories that protection which is given to other kinds of property.

I say that it is my purpose to propose this amendment. I shall vote for it myself. If it fails, then I shall vote for the resolution as it stands, and chiefly because of the concluding words. When these things shall have happened, when we get the necessary experience, and when the Territorial Legislature shall have been shown to fail and refuse, then the resolution says "it will be the duty of Congress to supply such deficiency." In that, I get a recognition of the principle for which I contend, that it is your duty to act. You refuse to act now. That is the gravamen of my complaint. You want a greater amount of evidence to bring your minds to the conclusion than I require to bring my mind to the conclusion. I think both the contingencies on which you base your determination to act, to pass laws for the protection of slave property, have already happened. I do not feel, myself, that any further experience is necessary to demonstrate that the courts, unaided by statutory law, cannot afford protection. I think we have abundant evidence that the Territories, some of them, at least, have failed and refused to afford this protection; and, so thinking, I am prepared to act now. If my friends will not be convinced, I will signify my own convictions; and then sit down quietly, and wait until their minds are brought to the same conclusion as my own. I hope, if we are ever to have protection, we shall get it while it may be useful, and not have it mockingly tendered after the Territories are hopelessly lost to the South and to slavery.

To talk merely about protection, and to do nothing, is a very idle ceremony. If we present a case demanding protection, you ought to meet it like men. If we have no case, say so, and let us quit talking

about it. Promises about what Congress will do years hence, when we shall be out and others in our places, are not worth the paper on which they are recorded

Apologizing, Mr. President, for having detained the Senate so long, I yield the floor.

REPLY OF SENATOR FITCH.

Mr. FITCH said: Mr. President, some of the remarks of the senator from Mississippi call for a brief response from me; but I ask the indulgence of the Senate for but a very short time, aware, as I am, from the lateness of the hour, that members must be extremely anxious to leave the chamber. The senator spoke in complimentary terms of the supposed efficacy of my professional, my medical prescriptions, but appears adverse to taking my political prescriptions—deems them inert. I trust it will be many years before the senator requires a prescription for the benefit of his bodily health. May he live a thousand years without a single bodily pang. But, sir, he is badly diseased politically; and yet he will not perceive the disease, or, perceiving it, will not admit its existence. He is like the victim of that scourge of our race in variable climates—the consumption; the victim who, even while passing away under the ravages of the disease, flatters himself that he is exempt from it; and fancies that his friends, whose solicitude in his behalf calls them daily about him, are laboring under some strange hallucination relative to his condition. Possibly I could convince the senator that he is the subject, and likely to become the victim, of a dangerous political malady. Possibly I could point out the appropriate treatment for his recovery. Possibly I could prepare a political prescription for his benefit, possessed of curative powers equal to those he has been pleased to assign to my professional. But I much fear me, as he has indicated that he would not adopt my treatment, that he would not take my prescription; I much fear me that he prefers to me, and those acting with me and our remedies, to patronize an eminent Northwestern man, deemed by many a political empiric, and his nostrums; for while the senator will not himself, as he has assured us, take that empiric's nostrums, deeming them poisonous, yet he consults him relative to their effects upon others, and pursues such course toward his nostrums as may well induce others to take them.

His argument, designed to prove that the common law cannot protect slave property, is an argument against the truth of history. African slavery was first introduced into England and its possessions under the common law. It first came to this country under the common law. It received here, and throughout the English dependencies for years its sole protection from the common law—years during which it most flourished; years during which it acquired that vigor which has perpetuated itself to this time. That law, as the senator well said, exists not only in this country, but wherever the Anglo-Saxon race have established a government, except in the particular instances in which it has been superseded by particular legislative acts. It exists certainly in this country, not only in States but in Territories alike. In both alike it is recognized by the courts, except where it comes in

conflict with some constitutional legislative enactment. Well, sir, one of its first axioms is, that every right has its remedy. I would say, then, to the senator from Mississippi, he has but to establish his right, and the remedy necessarily goes with it. The Constitution has asserted the right of the South as coequal with that of the North in the Territories. The Supreme Court has affirmed this right. The Constitution, the courts, and the common law, will protect the right. A territorial legislature may so regulate as to improve that protection. If it refuses so to do, it practices the doctrine of non-action recently inculcated, and evades its duty; but it cannot go any further in that direction; it cannot violate its duty and the Constitution by destroying, or even impairing, the right; however, it may make the attempt. A modern school of politicians reasons thus: if a territorial legislature has the right to protect and to regulate the protection of slave property, it has the right to impair its value; if it has the right to impair its value, it has the right to destroy it. What absurdity of reasoning, if it can be called reasoning! My friend from Mississippi dissents from the *rationale*, but arrives at its conclusion.

The Constitution guaranties to every citizen life, liberty, and his property. The Constitution, the courts, and the common law protect these rights. A legislature may so regulate as to improve this protection. A legislature may, for instance, vary the punishment for a violation of these rights. It may vary the punishment for taking life; but does the power to vary the punishment for taking life carry with it the power, by direct or indirect action, to lessen the value of the life of the innocent citizen? the power to place his life in daily jeopardy? the power to destroy his life? The latter proposition might as well be maintained as a similar one relative to the power to protect property.

I shall allude to but one—time will not allow more—of the senator's illustrations in support of his opinion that the common law is impotent to the protection of slave property. He asks, "if a man decoys my slave from one county to another adjoining, what remedy have I?" He admitted that he had a remedy, but objected that the remedy must necessarily be applied day after day. We can look at this illustration made by him in the very same light with another illustration which I have heard, if I mistake not, from the same senator. At all events, I will couple the two. It has been objected to the common law that it contained no provision against, and provided no punishment for, selling liquor to slaves; and that, in the absence of such law, their owners might find them, at times, not only useless and troublesome, but mischievous. The difficulty in both cases, in the illustration of to-day and the previous one, is not in punishing the act, but it is in proving it. Laws exist, I presume, in every slaveholding State prohibiting and punishing the sale of spirits to slaves, prohibiting and punishing the decoying away of a negro. If a negro, when he is owned as property, is found in the possession, without permission of law or owner, of some other person, the possession implies the fact that such person has decoyed him away, and is proof sufficient; but if he is found running at large, no one is responsible for his being so, unless the fact can be carried home to some individual that he did decoy him away. How is the fact to be established? Or if a slave

is found intoxicated, and thus useless, how are you to prove that any white man sold him spirits in violation of law? You cannot do it under the existing statutes. The slaveholding States, and several of the non-slaveholding, prohibit a negro's testimony being received against a white man; and the white man will decoy the negro, or sell him spirits in the presence of only the negro race. What, then, is the senator's remedy, if he has it not under the common law? Would he come here and ask Congress to do that which his own legislature has declined doing—put the negro on a level with the white man in the courts, put his slave on an equality with the senator himself before a court? Surely he would not ask that kind of congressional legislation; and if he did, respect for ourselves, if not for the government of which we are a part, would compel us to deny it.

He points us to the action of the legislatures of Nebraska and Kansas in proof of the necessity of congressional intervention, and in justification of the intervention he asks in his resolutions and bill. What is that action? The legislature of Nebraska passed a law prohibiting slavery. The governor vetoed it, and the veto was sustained. Surely, on this abortive attempt at usurpation of power, the senator cannot base an application for protection of slave property in Nebraska, even if property of that kind existed there for protection, which is not the case. The legislature of Kansas passed a similar act, and that, too, was vetoed, but passed again over the veto. The senator, in commenting on the resolutions last introduced by his colleague, stated that the remedies for protection of southern property in Territories, except such remedies as Congress might afford, were exhausted, and therefore Congress must intervene. Not so, even in Kansas. The judiciary yet stands between the right sought to be destroyed by the Kansas legislature and the usurpation by which the destruction of that right is sought. Who can doubt what the decision of that judiciary will be? No one who has read the Dred Scott decision can for a moment doubt that the courts, upon appeal, will declare the recent attempt at usurpation in Kansas, by a prohibitory act, null and void, and leave the owners of slave property there in the possession of their common-law remedies for protection—remedies which, in my estimation, will be found quite sufficient. This action to which he has pointed was the first, but the legitimate, fruit of the doctrine promulgated by the senator from Illinois, (Mr. DOUGLAS;) and it was hastened or induced in part, doubtless, from a supposition upon the part of the territorial legislatures that the overshadowing influence of that senator would induce a congressional sanction of their usurpation. When this expectation has been disappointed, as it will be, and when those legislatures have been rebuked by the courts for their attempted usurpation, as we know in advance, from the Dred Scott decision, they will be, such action will not be repeated by those or any other territorial legislatures, and the doctrine on which it is based will soon cease to be entertained; unless, indeed, the senator from Mississippi and others who may be disposed to aid him secure the nomination for the presidency of the main pillar of the doctrine, and thus make it a settled governmental policy.

The absence of any special legislative protection for slave property may, I grant you, subject the owners of that property to inconveniences, to annoyances; but certainly to none greater than are the owners of other self-moving, locomotive property daily subjected—inconveniences and annoyances requiring vigilance for the preservation of property, but not affecting its title, nor necessarily its possession. We must not *create*, and we should not be asked to *create*—and I doubt our right to grant the request if it is asked—rights either for the North or for the South, by legislation; but it is our duty, the duty of every department of the Government, to see that rights granted by, or recognized by, the Constitution, receive adequate protection. The *power* of the judiciary to grant such protection cannot be questioned; because the judiciary derives its power from the Constitution, which asserts the right; and the judiciary was created by that Constitution for the very purpose of asserting and defending rights under it. Hitherto, the courts have been found possessed of the required *means* for the adequate exercise of that power. If, at any time hereafter, they are found deficient in those means, and the local legislature refuses to grant them, it will be the duty of Congress to supply the deficiency *in support of the courts;* but it is not the duty, and scarce the right, of Congress to grant that general legislation in advance contemplated by the Senator's resolutions, and asked by his bill. Such legislation would be a departure, as he has well said, from that great principle of non-intervention we have so long sustained—a principle now so necessary, as it has been heretofore, for our success; and not only for that, but so necessary for harmony between the Northern and Southern wings of the only party which has its members from the lakes to the Gulf.

As with the senator's special "decoy" argument, adverse to the common law, so with his others; their fallacy generally can be shown; and, indeed, the impolicy and inutility, one or both, of most of the congressional legislation he asks for the Territories, can be easily demonstrated; but I do not design to consume the time of the Senate with any lengthy arguments on the subject. I shall leave them to abler heads. Far better leave the protection of an established right to the Constitution, the courts, and the great unwritten common law, which is the sense of right among intelligent men, their common sense and that of the courts, than to that over-legislation asked for in the senator's bill, and which would subject him to more inconvenience, more annoyance, in observance of its provisions, than will the absence of all legislation.

APPENDIX.

February 23, 1860, Mr. BROWN introduced the following bill, which, having been twice read, was referred to the Committee on Territories, Mr. GREEN, chairman.

AN ACT to punish offences against slave property in the Territory of Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. That every person, bond or free, who shall be convicted of actually raising a rebellion or insurrection of slaves, free negroes, or mulattoes, in the Territory of Kansas, shall suffer death.

SEC. 2. Every free person who shall aid or assist in any rebellion or insurrection of slaves, free negroes, or mulattoes, or shall furnish arms, or do any overt act in furtherance of such rebellion or insurrection, shall suffer death.

SEC. 3. If any free person shall, by speaking, writing, or printing, advise, persuade, or induce any slaves to rebel, conspire against, or murder any citizen of said Territory, or shall bring into, print, write, publish, or circulate, or cause to be brought into, printed, written, published, or circulated, or shall knowingly aid or assist in bringing into, printing, writing, publishing, or circulating in said Territory any book, paper, magazine, pamphlet, or circular for the purpose of exciting insurrection, rebellion, revolt, or conspiracy on the part of the slaves, free negroes, or mulattoes, against the citizens of said Territory, or any part of them, such person shall be guilty of felony, and, on conviction thereof, shall be imprisoned at hard labor for not less than ten years.

SEC. 4. If any person shall entice, decoy, or carry away out of said Territory any slave belonging to another, with intent to deprive the owner thereof of the services of such slave, or with intent to effect or procure the freedom of such slave, he shall be adjudged guilty of grand larceny, and, on conviction thereof, shall be imprisoned at hard labor for not less than five nor more than ten years.

SEC. 5. If any person shall aid or assist in enticing, decoying, or persuading, or carrying away, or sending out of said Territory any slave belonging to another, with intent to procure or effect the freedom of such slave, or with intent to deprive the owner thereof of the services of such slave, he shall be adjudged guilty of grand larceny, and, on conviction thereof, shall be imprisoned at hard labor for not less than five years, nor more than ten years.

SEC. 6. If any person shall entice, decoy, or carry away out of any State or other Territory of the United States any slave belonging to another, with intent to procure or effect the freedom of such slave, or to deprive the owner thereof of the services of such slave, and shall bring such slave into said Territory of Kansas, he shall be adjudged guilty of grand larceny in the same manner as if such slave had been enticed, decoyed, or carried away out of said Territory of Kansas, and in such case the larceny may be charged to have been committed in any county of said Territory of Kansas, into or through which such slave shall have been brought by such person, and, on conviction thereof, the person offending shall be imprisoned at hard labor for not less than five years, nor more than ten years.

SEC. 7. If any person shall entice, persuade, or induce any slave to escape from the service of his master or owner in the said Territory of Kansas, or shall aid or assist any slave in escaping from the service of his master or owner, or shall aid, assist, harbor, or conceal any slave who may have escaped from the service of his master or owner, shall be deemed guilty of felony, and be punished by imprisonment at hard labor for not less than five years, nor more than ten years.

SEC. 8. If any person in the said Territory of Kansas shall aid or assist, harbor or conceal any slave who has escaped from the service of his master or owner in another State or Territory, such person shall be punished in like manner as if such slave had escaped from the service of his master or owner in the said Territory of Kansas.

SEC. 9. If any person shall resist any officer while attempting to arrest any slave that may have escaped from the service of his master or owner, or shall rescue such slave when in custody of any officer or other person, or shall entice, persuade, aid or assist such slave to escape from the custody of any officer or other person who may have such slave in custody, whether such slave has escaped from the service of his master or owner in said Territory of Kansas or in any State or other Territory, the person so offending shall be guilty of felony, and punished by imprisonment at hard labor for not less than two years, nor more than five years.

SEC. 10. If any marshal, sheriff, or constable, or the deputy of any such officer, shall, when required by any person, refuse to aid or assist in the arrest and capture of any slave who may have escaped from the service of his master or owner in any Territory or State, such officer shall be fined in a sum of not less than one hundred dollars, nor more than five hundred dollars.

SEC. 11. If any person print, write, introduce into, publish, or circulate, or cause to be brought into, printed, written, published, or circulated, or shall knowingly aid or assist in bringing into, printing, publishing, or circulating within the Territory of Kansas any book, paper, pamphlet, magazine, handbill, or circular containing any statements, arguments, opinions, sentiment, doctrine, advice, or innuendo calculated to produce a disorderly, dangerous, or rebellious disaffection among the slaves in the Territory of Kansas, or to induce such slaves to escape from the service of their masters, or to resist their authority, he shall be guilty of felony, and be punished by imprisonment and hard labor for a term not less than five years, nor more than ten years.

SEC. 12. If any free person, by speaking or by writing, assert or maintain that persons have not the right to hold slaves in the Territory of Kansas, or shall introduce into the said Territory, print, publish, write, circulate, or cause to be introduced into the said Territory, written, printed, published, or circulated in said Territory any book, paper, magazine, pamphlet, or circular containing any denial of the right of persons to hold slaves in said Territory, such persons shall be deemed guilty of felony, and punished by imprisonment at hard labor for a term not less than two years, nor more than five years.

SEC. 13. No person who is conscientiously opposed to holding slaves, or who does not admit the right to hold slaves in the Territory of Kansas, shall sit as a juror on the trial of any prosecution for any violation of any of the sections of this act.

SEC. 14. It shall be the duty of the Secretary of State to cause this law to be published for sixty days from and after its passage in at least three newspapers in the Territory of Kansas; and from and after the expiration of such period it shall be in full force.